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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1243

REBECCA NIEWIADOMSKI, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Michigan, Southern Division (R. 129–131) is not reported. The opinion of the Circuit Court of Appeals for the Sixth Circuit is reported at 159 F. 2d 683.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 7, 1947 (R. 165). The petition for a writ of certiorari was filed April 14, 1947. The jurisdiction of this Court is invoked under the provisions of Section 240 (a)

of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether on all the evidence both courts below erred in holding that petitioner had not stood *in loco parentis* to insured prior to his entry into the armed forces of the United States, as required by Sections 601 (f) and 602 (g) of the National Service Life Insurance Act of 1940, as amended, limiting the classes of designable beneficiaries.

2. Whether the United States was estopped to deny the existence of an *in loco parentis* relationship between petitioner and the insured.

STATUTES INVOLVED

On March 25, 1942, when the insured applied for insurance, Section 602 (g) of the National Service Life Insurance Act of 1940, c. 757, 54 Stat. 1008, 1010 (38 U. S. C. 802 (g)), provided:

> The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all

> times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.

Subsequently, Section 601 of the National Service Life Insurance Act of 1940 was amended by Section 7 of the Act of July 11, 1942, c. 504, 56 Stat. 657, 659, by adding at the end thereof the following subsection:

> (f) The terms "parent", "father", and "mother" include a father, mother, father through adoption, mother through adoption, and persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year.[1]

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[1] Section 8 of the same Act of July 11, 1942 amended Section 602 (g) by striking therefrom: "(including person in loco parentis if designated as beneficiary by the insured)."

Pub. Law. 589, 79th Cong., 2d sess., approved August 1, 1946 (Insurance Act of 1946), further amended these sections. Section 1 (a) of that Act provides: "Section 601 (f) of the National Service Life Insurance Act of 1940 is hereby amended effective as of October 8, 1940, to read as follows: '(f) The terms "parent," "father," and "mother" include a father, mother, father through adoption, mother through adoption, persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year, and a stepparent, if designated as beneficiary by the insured.'"

Section 4 provides: "Section 602 (g) of the National Service Life Insurance Act of 1940, as amended, is hereby amended by substituting a colon for the period at the end thereof and adding the following: '*Provided*, That the pro-

STATEMENT

The facts are summarized by the court below as follows (R. 166–168):

Wayne S. Andrews, the insured, was born June 4, 1906, and entered the armed forces of the United States as a soldier on March 24, 1942 (R. 10, 12, 166). On March 25, 1942, while in such service, he applied for and was granted, effective April 1, 1942, a National Service Life Insurance contract in the principal sum of $3,000 (R. 10, 166). Premiums thereon were paid by deductions from his military pay up to and including the month of June 1944 (R. 10, 166). He died while in service on June 25, 1944 (R. 12, 166). In his application for the insurance the insured designated petitioner, who was his first cousin, as the beneficiary, describing her relationship to him as "loco parentis" (R. 76, 166). In naming petitioner as such beneficiary and as standing *in loco parentis* to him, the insured acted in good faith; no fraud or concealment of any kind was shown (R. 166).

Both of the parents of the insured died when he was a young child and he lived with his uncle until he was 26 years of age (R. 12, 30–31, 166). He never married (R. 79, 166). Following the death of his uncle in 1932, he went to the home of the

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visions of this subsection as to the restricted permitted class of beneficiaries shall not apply to any national service life-insurance policy maturing on or after the date of enactment of the Insurance Act of 1946.'"

petitioner and her husband in Grand Rapids, Michigan (R. 12, 30–32, 166). He was without money, without clothes, without a place to live in, and had no employment (R. 33, 61, 166). The petitioner and her husband took him into their home, gave him clothes and food, and treated him as a member of the family (R. 33–34, 61, 166–167). He had completed eight years of elementary school (R. 159, 167), but was not skilled in any trade and was only able to obtain work as a common laborer (R. 42, 167). He secured employment after about two weeks (R. 78, 167). He used his wages for his first two weeks' work for his own needs and then, beginning about four weeks after coming to petitioner's home, he started paying board to her at the rate of $5.00 per week, and continued to do so throughout the time that he lived in her home (R. 78–79, 167). He continued to make his home with the petitioner and her husband until his entry into the armed forces, with the exception of about four different periods of several weeks each, when as a result of friction with petitioner's husband, brought about by insured's habitually drinking to excess, he left and lived elsewhere, but leaving his clothes at petitioner's home (R. 36–38, 62–63, 167). While living with petitioner he was able to and earned his living as a common laborer, earning an average of approximately $20.00 per week when working (R. 159, 167). He collected

his wages, retained them as his own, and handled his own finances (R. 43, 167).

The insured at times performed household chores, such as cutting the grass, removing snow from the walks, chopping wood, and bringing in coal, without asking or receiving any pay therefor (R. 45–46, 167). He also assisted petitioner's husband in repairing the roof of the house (R. 45, 167). He ate with the family and had the run of the home (R. 41, 43, 66, 167). He shared a room with one of petitioner's sons (R. 41, 167). He took petitioner's children to amusement places and occasionally bought them presents (R. 44, 167). He exchanged gifts at Christmas time with members of the family (R. 44, 45, 167). He usually accompanied petitioner and her family on fishing and pleasure trips (R. 47, 167). The petitioner washed and mended his clothes without extra compensation (R. 46, 62–63, 167). He occasionally gave gifts to the petitioner, such as a pair of stockings or housedress (R. 45, 167). He called the petitioner, who was four months and four days older than he (R. 77, 166), "sister" most of the time and she usually called him by his first name and sometimes "brother" (R. 44, 65, 167). The petitioner testified that she always considered the insured as her brother, and not as a son (R. 81, 167–168). The rest of the family called him "Uncle Wayne" (R. 52, 168).

At the time of the issuance of the contract of insurance and at the time of his death, the in-

sured had no actual widow, child, parent, brother, or sister (R. 58, 79, 153, 160, 168). The United States has retained all the premiums and has never tendered return thereof either to the administratrix of the insured's estate (R. 168), or into court during these proceedings (R. 10, 22, 168). Claim for insurance benefits under the policy was filed with the Veterans' Administration on August 22, 1944, and was denied on February 14, 1945 (R. 2, 7–8, 168).

Petitioner, on May 2, 1945, filed a complaint in the United States District Court for the Western District of Michigan, Southern Division, under Section 617 of the National Service Life Insurance Act of 1940 (38 U. S. C. 817). The complaint, which sought recovery of the full benefits of the insurance contract, alleged, *inter alia*, that a disagreement existed between petitioner and the Veterans' Administration and that petitioner stood *in loco parentis* to the insured at the time the insurance became effective (R. 1–3). The United States filed its answer denying that petitioner stood *in loco parentis* to the insured (R. 7). Petitioner replied that the United States was estopped to assert that defense (R. 9). The district court, after hearing the evidence without a jury, found the facts as above set forth (R. 132–134); it held that petitioner did not stand *in loco parentis* to the insured at any time prior to his entry in the armed forces, and that the United States was not estopped to raise that defense

(R. 134). On appeal, the court below affirmed (R. 165).

ARGUMENT

Petitioner here questions the propriety of the rulings, concurred in by both the district court and the court below, that she had not stood *in loco parentis* to the insured and that the United States was not estopped to raise that question. Both courts based their findings on these issues on all the evidence in the record, which findings, we submit, are correct and do not require review by this Court. *Tennessee Coal, Iron & R. R. Co.* v. *Muscoda Local,* 321 U. S. 590, 605; *Goodyear Tire & Rubber Co.* v. *Ray-O-Vac Co.,* 321 U. S. 275, 278. The additional question stated by petitioner as to whether the relationship of *in loco parentis* could exist when the insured is not a minor is not involved in the present posture of this case[2] since the court below has expressly refrained from ruling thereon, stating (R. 170):

> These cases [previously cited by the court] accordingly embody rulings on one of the questions presented in the case at bar,

[2] There are three district court decisions which disagree as to the scope of the term as used in Section 22 of the War Risk Insurance Act of 1917 and Section 3 (5) of the World War Veterans' Act of 1924. In *Meisner* v. *United States*, 295 Fed. 866, the District Court for the Western District of Missouri held that the common-law meaning of the term did not require that the child be a minor for the relationship to exist. In *Howard* v. *United States*, 2 F. 2d 170, and *Tudor* v. *United States*, 36 F. 2d 386, the District Courts for the Eastern Dis-

namely, whether or not the relationship of in loco parentis can exist when the insured is not a minor. The present case might possibly turn on that issue. However, in view of our conclusions with regard to the broader aspects of the case, we make no ruling on that issue and pass to a discussion of whether or not under the particular facts in this case the appellant actually stood in the relationship of in loco parentis to the insured, irrespective of the fact that he was an adult.

1. Independently of whether the relationship of *loco parentis* could exist when the insured is not a minor, we submit that both courts below were correct in holding on all the evidence that that relationship did not exist here. Although petitioner apparently was willing to furnish material help to a close relative in need, even for an indefinite period of time, that alone did not cause her to stand *in loco parentis* to the insured. For despite that aid to the insured, petitioner admitted that she regarded the insured as a brother and not as a child (R. 130, 171), whereas it is clear that the term as used in Section 602 (g) and subsequently in Section 601 (f) incorporated at least that much of its generally accepted common law

trict of Kentucky and for the Western District of Washington, respectively, held the contrary. The only case under the National Service Life Insurance Act dealing with the question is *Zazove* v. *United States*, 156 F. 2d 24 (C. C. A. 7), which follows the *Meisner* case.

meaning requiring the existence of a parent-child relationship.

The term "in loco parentis" was used in Section 22 of the War Risk Insurance Act of 1917 (40 Stat. 398, 400–401, as amended by 41 Stat. 371), and in Section 3 (5) of World War Veterans' Act of 1924 (43 Stat. 607–608), 38 U. S. C. 424 (5). The Veterans' Administration and its predecessors have for 22 years consistently construed it as requiring a parent-child relationship[3] (See Administrator's Decision No. 536, Veterans' Administration, dated October 22, 1943), and the lower federal courts, whatever their disagreement on the effect of majority, are, however, in agreement that *in loco parentis* embodies at least that relationship. *Meisner* v. *United States,* 295 Fed. 866 (W. D. Mo.); *Howard* v. *United States,* 2 F. 2d 170 (E. D. Ky.); *Tudor* v. *United States,* 36 F. 2d 386 (W. D. Wash.). In including persons *in loco parentis* among the designable beneficiaries under the Insurance Act of 1940, Congress was apparently aware that the term also appeared in these earlier Acts (cf. S. Rep. No. 403, 78th Cong., 1st sess. p. 9), and hence may be presumed in reenacting the term in the Act here involved to

[3] This Court has already recognized that the consistent administrative construction given these Acts by the Veterans' Administration is entitled to great weight, "and such construction is not to be overturned unless clearly wrong, or unless a different construction is plainly required." *United States* v. *Jackson,* 280 U. S. 183, 193; *United States* v. *Citizens Loan Co.,* 316 U. S. 209, 214.

have adopted this consistent construction (*Great Northern Ry. Co.* v. *United States,* 315 U. S. 262, 275–276 *National Lead Co.* v. *United States,* 252 U. S. 140, 146; cf. *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 488–489), particularly since it accords with the usual and well-settled sense of the term. Cf. *United States* v. *Stewart,* 311 U. S. 60, 63; *Deputy* v. *du Pont,* 308 U. S. 488; *Old Colony R. Co.* v. *Commissioner,* 284 U. S. 552.

Moreover, the Act on its face supports that construction. Far from being loosely drawn with respect to the designable beneficiaries, the statute in question contains a detailed and specific enumeration of each possible beneficiary and enlarges the scope of permitted beneficiaries, wherever the common law meaning of the word used would be restrictive. The term *in loco parentis* appeared in Section 602 (g) in an explanatory parenthesis to the word "parent." In Section 601 (f) the term is one of a list of parent-child relationships including father or mother by adoption (and step-parent by the 1946 Amendment, *supra* p. 3), by which the Act enlarges the common law meaning of " 'parent', 'father,' and 'mother' ". See S. Rep. No. 1430, 77th Cong., 2d sess., p. 2. In view of such detailed enumeration, the placing of the term *in loco parentis* in such close apposition to, and as included in, the word "parent" indicates clearly that Congress regarded that term as involving a parent-child relationship and intended to adopt at least that much of its common law meaning.

The decision of the Circuit Court of Appeals for the Seventh Circuit in *Zazove* v. *United States,* 156 F. 2d 24, is not to the contrary. That case involved a proceeding to recover benefits under a National Service Life Insurance Contract by the insured's aunt, who had been named as beneficiary and described as *in loco parentis.* Although the court there stated that the words "in loco parentis" were descriptive and "were not to be restricted to the 'stick in the bark' legal connotations usually attached at common law" (156 F. 2d at 26), even that court construed the term as requiring that the beneficiary stand "in fact in the relation of a parent toward the insured, yielding whatsoever there is of substance or sentiment to the relationship" (156 F. 2d at 27), a relation which in that case it found existed.

2. We submit that the holdings of the courts below that the United States was not estopped to deny the absence of an *in loco parentis* relationship between petitioner and insured, were likewise correct. The insurance was granted, as the fact of the certificate indicated, "under the authority of the National Service Life Insurance Act of 1940, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted * * *" (R. 5), and one of these provisions was the prohibition against payment of insurance benefits except to specific classes of persons. In describing petitioner as

one standing *in loco parentis* in his application for insurance, the insured alone knew the facts of his relationship to petitioner; the United States was unaware of the true situation and clearly was under no duty to investigate. In such circumstances the lapse of a long period of time without the insured being advised that the designated beneficiary was not a permitted one plainly furnishes no basis for estoppel.

Nor does the fact that the premiums were collected and retained furnish any additional grounds for estoppel. The insurance was and is a valid contract, and is payable to any claimant who may appear hereafter and who falls within the statutory classes of permissible beneficiaries. While the insured was living he was entitled to have the insurance issued and continued as long as he paid premiums, since he met the statutory requirements for the issuance of insurance. Moreover, the insured had no reason to believe, or was any representation made, that the premiums would be returned in the event of a determination that petitioner was not eligible to receive insurance benefits. The premiums accordingly have been earned and the United States is entitled to retain them, at least until such time as it is determined that no beneficiary can appear.[4] In any event, as the court below pointed out (R. 174):

[4] While petitioner is also the administratrix of the estate of the insured the instant suit is brought in her personal and not her representative capacity. Moreover, the suit does not seek to recover the premiums but is for the face of the policy.

> * * * it appears well settled that in matters of this kind the United States is neither bound nor estopped by the acts of its officers and agents in entering into an agreement to do what the law does not permit. Government officers may not waive the provisions of the National Service Life Insurance Act. *Wilber National Bank* v. *United States,* 294 U. S. 120, 123; *Coleman* v. *United States,* 100 Fed. (2d) 903, 905 (C. C. A. 6); *United States* v. *Valndza,* 81 Fed. (2d) 615, 617 (C. C. A. 6).

See also *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409; *United States* v. *City & County of San Francisco,* 310 U. S. 16, 32.

CONCLUSION

The decision of the court below was correct and there is no conflict. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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